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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

REPLY BRIEF FOR THE APPELLANT

Ex parte Ajay KAMALVANSI et al.

**METHOD AND APPARATUS FOR FAULT TOLERANT PERSISTENCY
SERVICE ON NETWORK DEVICE**

Serial No. 10/027,577

Appeal No.:

Group Art Unit: 2113

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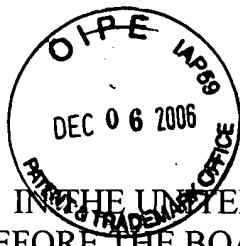
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Encls: Reply Brief (in triplicate)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Appellant:

Ajay KAMALVANSI et al.

Appeal No.:

Serial Number: 10/027,577

Group Art Unit: 2113

Filed: December 20, 2001

Examiner: Emerson C. Puente

For: METHOD AND APPARATUS FOR FAULT TOLERANT PERSISTENCY
SERVICE ON NETWORK DEVICE

REPLY BRIEF

December 6, 2006

I. INTRODUCTION

This Reply Brief is filed in response to the Examiner's Answer dated October 12, 2006. In that Examiner's Answer, while no new grounds of rejection are made, comments and explanations are provided which are tantamount to new points of argument. This Reply Brief, therefore, is submitted to address these new points of argument, and to clarify why claims 1-7, 9-15, and 17-21 of the pending application should be considered to be patentable over U. S. Patent No. 5,615,364 to Marks ("Marks"), in view of U.S. Patent No. 5,649,089 to Kilner ("Kilner"), U.S. Patent No. 6,411,969 to Tam ("Tam"), and U.S. Patent No. 6,105,021 to Bertis ("Bertis"), and, therefore, should be found by this Honorable Board of Patent Appeals and Interferences to be allowable. Also, this Reply Brief is submitted to

further support why this Honorable Board of Patent Appeals and Interferences should find claims 8 and 16 to be allowable over Marks, Kilner, U.S. Patent No. 5,317,742 to Bapat (“Bapat”), and publication “Structure of Management Information Version 2(SMIV2)” by McCloghrie et al. (“McCloghrie”).

I. RESPONSE TO EXAMINER'S ANSWER

The Rejection of claims 1-7, 9-15, and 17-21 under 35 U.S.C. 103(a) as being obvious over Marks, Kilner, Tam, and Bertis.

Recognizing that Marks and Kilner are devoid of any teaching or suggestion providing, “a magic number is kept to distinguish any tar and zipped file with the standby database,” as recited in independent claims 1, 9, and 17, Tam is relied once again in the Examiner’s Answer as describing such recitation. Specifically, on page 10 of the Examiner’s Answer, in response to Appellant’s argument asserting that a combination of Marks, Kilner, Tam, and Bertis fails to teach or suggest, “a magic number is kept to distinguish any tar and zipped file with the standby database,” the Examiner’s Answer contends that “Tam further discloses when backing up or dumping to tape, it is necessary to furnish information common to any disk-to-tape process, such as a serial number, indicating a magic number.” However, the serial number referred to in Tam is not to distinguish **any tar and zipped file with the standby database**. Instead, the serial number, which the Examiner’s Answer refers to as the magic number, is simply information **to identify the tape**. Tam clearly sets forth in the portion referred to by the Examiner’s Answer that “when dumping is done to tape, it is necessary to furnish information common to any disk-to-tape process and this information would include the tape name, the cycle number, compression and non-compression, the density, and the SCRATCHPOOL option.” See column 6, lines 30-36, of Tam.

The Examiner's Answer also indicates that Tam provides that "as the serial number is stored or furnished with the dump or backup copy of the database, it distinguishes the backup file(s) with the standby copy." However, there is no distinguishing in Tam of any tar and zipped file with the standby copy.

In addition, the Examiner's Answer submits that because "Tam further teaches such backup could be compressed (see column 6, line 34)," the Examiner's Answer concludes that Tam would indicate "a magic number is kept to distinguish any compressed file with the standby database." However, the rationale to arrive such conclusion is unfounded. As previously explained, column 6, line 34, of Tam provides that "...this information would include the tape name, the cycle number, compression and non-compression..." but nothing more. Tam does not indicate that such information is kept to distinguish any compressed file with the standby database as contended in the Examiner's Answer. Instead, the cycle number, compression and non-compression described in Tam are simply types of information to identify the tape, not to distinguish any compressed file with the standby database. Simply because Bertis describes that tar and zip files are compression files that alone do not resolve the deficiencies of Tam. Thus, contrary to the Examiner's Answer, Tam and Bertis do not provide for a magic number as recited in independent claims 1, 9, and 17.

A copy of an excerpt of a book titled "Fundamentals of Database Systems," was attached to the Examiner's Answer. Similarly to Tam and Bertis, this book excerpt does not

teach or suggest “a magic number is kept to distinguish any compressed file with the standby database.” This book excerpt simply provides a general description of characteristics of a database and the self-describing nature of a database, but nothing teaching or suggesting the particular recitations of the independent claims. Such book excerpt appears to be simply cumulative information.

As a person of ordinary skill in the art will appreciate, the recitations of independent claims 1, 9, and 17 are being essentially used to arrive to the combination of Tam and Bertis. Although there is no distinguishing in Tam of any tar and zipped file with the standby copy, although Tam does not indicate that information is kept to distinguish any compressed file with the standby database as contended in the Examiner’s Answer, and although Bertis does not cure the deficiencies of Tam, the Examiner’s Answer concludes that “a magic number is kept to distinguish any compressed file with the standby database,” as recited in independent claims 1, 9, and 17. For similar reasons as those presented in the Appeal Brief for the Appellant filed July 12, 2006, the recitations of independent claims 1, 9, and 17 are essentially being used to arrive to the combination of Marks, Kilner, Tam, and Bertis. Hindsight reconstruction is essentially used to pick and choose among isolated disclosures (Marks, Kilner, Tam, and Bertis) to then arrive to the recitations of independent claims 1, 9, and 17, which, according to recent case law referred to in the Appeal Brief for the Appellant, is clearly improper.

Although it is contended in the Examiner’s Answer that “it must be recognized that

any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper." However, no support or no showing is provided that would support such contention. For instance, although Tam limits its description to providing information common to any disk-to-tape process to identify a tape, the Examiner's Answer concludes that Tam would indicate "a magic number is kept to distinguish any compressed file with the standby database." Clearly, it appears that the Examiner's Answer, as well as previous Office Actions, is stretching the actual descriptions of the references cited using hindsight, such as it is done with Tam, to then conclude, without any showing in the references cited that a combination thereof would teach or suggest, at least, "a magic number is kept to distinguish any compressed file with the standby database," as recited in independent claims 1, 9, and 17.

Accordingly, Appellants respectfully request that this rejection to independent claims 1, 9, and 17 and related dependent claims be reversed.

The Rejection of claims 8 and 16 under 35 U.S.C. 103(a) as being obvious over Marks, Kilner, Bapat, and McCloghrie.

Claims 8 and 16 were rejected under 35 U.S.C. 103(a) as being obvious over Marks,

Kilner, Bapat, and McCloghrie. Appellants respectfully traverse this rejection, because a combination of Marks, Kilner, Bapat, and McCloghrie would not teach or suggest all the recitations of dependent claims 8 and 16.

Dependent claim 8 depends from dependent claim 5, which in turn depends from independent claim 1, and recites the additional features of “the predetermined format is Structure of Management Information version 2 (SMIv2) format.” Because the combination of Marks, Kilner, Bapat, and McCloghrie must teach, individually or combined, all the recitations of the base claim and any intervening claims of dependent claim 8, the arguments presented above supporting the patentability of independent claim 1 over Marks and Kilner are incorporated herein.

Bapat generally describes a Structure of Management Information (SMI) translated to a schema definition which is used to design the formats and templates of data structures within a database, within which actual information content will be stored. In turn, McCloghrie generally describes Internet protocol standards. However, Bapat and McCloghrie do not cure the deficiencies of Marks and Kilner, and, therefore, a combination thereof fails to teach or suggest all the recitations of independent claim 1. For instance, similarly to Marks and Kilner, Bapat and McCloghrie are devoid of any teaching or suggestion providing “a magic number is kept to distinguish any tar and zipped file with the standby database,” as recited in independent claim 1.

Thus, a combination of Marks, Kilner, Bapat, and McCloghrie would fail to teach

or suggest all the recitations of independent claim 1.

Dependent claim 16 depends from dependent claim 13, which in turn depends from independent claim 9, and recites the additional features of “the predetermined format is Structure of Management Information version 2 (SMIv2) format.” Because the combination of Marks, Kilner, Bapat, and McCloghrie must teach, individually or combined, all the recitations of the base claim and any intervening claims of dependent claim 16, the arguments presented above supporting the patentability of independent claim 9 over Marks and Kilner are incorporated herein.

As indicated with respect to dependent claim 8, Bapat and McCloghrie do not cure the deficiencies of Marks and Kilner, and, therefore, a combination thereof fails to teach or suggest all the recitations of independent claim 9. For instance, similarly to Marks and Kilner, Bapat and McCloghrie are devoid of any teaching or suggestion providing “switching from the active database to the standby database is transparent to an external application and a magic number is kept to distinguish any tar and zipped file with the standby database,” as recited in independent claim 9.

Thus, a combination of Marks, Kilner, Bapat, and McCloghrie would fail to teach or suggest all the recitations of independent claim 9.

Accordingly, Appellants respectfully request that this rejection to dependent claims 8 and 16 be reversed.

II. CONCLUSION

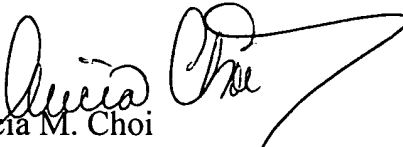
As explained above, each of claims 1-21 recite one or more elements or features that are neither disclosed nor suggested in the cited references. Among other things, the cited references do not provide the particular features recited in the method of independent claim 1. The office action's interpretation of Marks, Kilner, Tam, and Bertis providing such recitations of claims 1-7, 9-15, and 17-21 and Marks, Kilner, Bapat, and McCloghrie providing such recitations of dependent claims 8 and 16 is erroneous. This final rejection being in error, therefore, Appellants respectfully request that this honorable Board of Patent Appeals and Interferences reverse the Examiner's decision in this case and indicate the allowability of application claims 1-21.

In the event that this paper is not being timely filed, the Appellants respectfully petition for an appropriate extension of time.

Any fees for such an extension together with any additional fees which may be due with respect to this paper may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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